

HOPEFULLY, A VICTORY AGAINST PRISONER PHONE RATE HIKES

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The legislature has now passed a supplemental appropriations bill for the current fiscal year, FY 2010-2011. It is SB 272. The enrolled version and the fiscal analysis are available at the legislative website.

The bill contains boilerplate [language] in Sec. 272 that requires contracts for prisoner telephone services to impose a fee schedule that is no greater than residential user fee schedules in the area surrounding the corrections facility. The bill also, separately, repeals Sec. 219 of the current MDOC appropriations bill, which contains the language that allows for a special equipment fee. Hopefully, the net result of this will be to eliminate the surcharge for the special equipment fund and reduce the phone rates to the 4 cents/minute base rate in the PCS contract. However, we're not quite there yet.

. . . .If the governor goes ahead and signs the supplemental as is, the phone rates should fall immediately. It is my understanding that PCS has no basis for a legal challenge because the special equipment fund was an option, not part of the base contract. If the state no longer wants the option, PCS is still bound to deliver the base rates for which it contracted. It can't claim it was harmed because it didn't have to make any investment in equipment in order to collect its wholly unearned 30% of the special equipment fund. If it isn't asked to collect the money and pass it on to the MDOC, it just doesn't get an "administrative fee." Of course, this doesn't mean that PCS won't try to litigate or get out of the contract or re-negotiate it.

There could be another wrinkle in terms of defining exactly what the residential user rates near the prisons are. This language is designed to counter the efforts by vendors to compare prisoner pay phone rates to the exorbitant rates that phone companies charge in the free world to the handful of folks who are still captive to an occasional pay phone, like someone at an airport who doesn't have a cell phone. I gather it is unlikely that residential rates will be greater than 4 cents a minute. They could be lower. They could also vary by market and carrier. So there may be some debate over exactly how the new standard of comparison should play out.

So, all this appears to be amazingly good news, but we should be cautious about sharing it without explaining the caveats. Also, be aware that this resulted from a large group effort. There was certainly a lot of pressure from the previous carrier who lost the bid. But the pressure from families and advocates created a groundswell and a moral rationale that helped put the issue over the top. And however things play out, it looks the result will be better than it was going to be. I will keep everyone posted as I learn more.